

## **DECISION**

**Dispute Codes:** CNL and MT

### **Introduction**

This application was brought by the tenant seeking to have set aside a two-month Notice to End Tenancy for landlord use served in person on September 29, 2010 and setting an end of tenancy date of November 30, 2010. The tenant also requested additional time to make this application having failed to meet the 15-day deadline set by section 49(8) of the *Act*.

### **Issue(s) to be Decided**

This matter requires a decision on whether the tenant is out of time in bringing this application and whether the Notice to End Tenancy was served, in good faith to enable the landlord to demolish the rental unit.

### **Background and Evidence**

The tenancy in question began approximately 20 years ago, although the City of Burnaby purchased the property with a possession date of September 16, 2010, entered into a new rental agreement with the tenant and advised him at that time the property was slated for demolition imminently. Rent is \$375 per month.

The tenant was served with the Notice to End Tenancy with an accompanying letter of explanation on September 29, 2010 and was granted free rent for November 2010 as prescribed under section 51 of the Act when a tenant has received notice for landlord use.

During the hearing, the landlord submitted into evidence a Memorandum of August 31, 2010 reporting City Council's approval of the purchase and demolition of the building and a copy of the demolition permit required under section 49(6)(a) of the *Act*.

As the hearing progressed, the tenant advised that he could vacate by January 31, 2010 and the landlord concurred with that end date provided the tenant paid rent for December 2010 and January 2011. The rent for November had been returned to the Ministry of Social Development as the landlord had anticipated that would be the last and rent-free month of the tenancy. As a result, the ministry had not paid the rent for December.

## **Analysis**

The *Act* provides mechanisms for both a landlord and a tenant to end the tenancy, absent serious cause or unpaid rent. Where the tenant is normally required to give only one month's notice, the *Act* requires the landlord to give double the one month's notice when it is given for landlord use. In addition, the landlord must give one free month's rent, and take possession on penalty of an additional two months rent if the landlord does not use the unit for the stated and approved purpose. Clearly, the legislation works to ensure that Notice for landlord use is not taken lightly.

In evaluating a Notice to End for landlord use, policy guideline 2-2 advises that such notice must be given in faith and that:

The "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

In considering the present matter, I find no reason to question the good faith of the Notice to End Tenancy, and I can find no cause to set aside the Notice.

On hearing that determination, the landlord requested, and I find she is entitled to an Order of Possession. Given that the time extension to January 31, 2010 granted by the landlord is contingent on the tenant paying the rent for December and January, the Order of Possession will be effective two days from service to permit the landlord to serve it at a time appropriate to the contingency.

Having had the matter partially resolved by way of consent agreement between the parties, I find it is not necessary to rule on the tenant's request for a time extension.

## **Conclusion**

The landlords' copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, effective two days from service of it on the tenant.

December 13, 2010